UNITED
NATIONS

CCPR

International Covenant
on Civil and
Political Rights

Distr.
GENERAL

CCPR/C/SR.1122
26 March 1992

ORIGINAL: ENGLISH

HUMAN RIGHTS COMMITTEE

Forty-fourth session

SUMMARY RECORD OF THE 1122nd MEETING

Held at Headquarters, New York,
on Monday, 23 March 1992, at 3 p.m.

Chairman: Mr. POCAR

CONTENTS

Election of a Vice-Chairman

Organizational and other matters (continued)

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Chief, Official Records Editing Section, Department of Conference Services, room DC2-750, 2 United Nations Plaza.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

The meeting was called to order at 3.35 p.m.

ELECTION OF A VICE-CHAIRMAN

1. Mr. NDIAYE nominated Mr. El-Shafei for the office of Vice-Chairman, to replace Mr. Wako who had relinquished his post.

2. Mr. MAVROMMATIS seconded the nomination.

3. Mr. El-Shafei was elected Vice-Chairman by acclamation.

ORGANIZATIONAL AND OTHER MATTERS (continued)

Draft general comment regarding article 10 of the Covenant (CCPR/C/42/CRP.3)

4. Miss CHANET said that the document before the Committee had been prepared by the Working Group on Article 40 of the Covenant in July 1991 on the basis of the discussion of her original draft at the 1056th and 1060th meetings. She referred the Committee to her previous detailed introduction of the draft general comment (see CCPR/C/SR.1056/Add.1). Like the draft general comment on article 7 of the Covenant, the draft general comment on article 10 was a rewriting of an existing general comment, taking into account what the Committee had learned from its consideration of country reports as well as evolving legal requirements and the entry into force of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Committee would be interested to know that article 10 of the Covenant was currently being studied by the Council of Europe, which was considering including it as an additional protocol to the European Convention on Human Rights; and the Committee's draft general comment would therefore be especially useful to the European negotiators.

5. The CHAIRMAN invited the Committee to discuss the text paragraph by paragraph.

Paragraph 1

6. The CHAIRMAN suggested that it should be indicated at the outset that the draft general comment replaced an earlier general comment on the same article of the Covenant.

7. Mr. DIMITRIJEVIĆ, supported by Mr. NDIAYE, said that he saw no reason to cite the relevant provision of article 10 of the Covenant in paragraph 1 or, indeed, elsewhere in the text.

8. Miss CHANET proposed accordingly that paragraph 1 of the text should be deleted and replaced by the following paragraph: "This general comment replaces general comment 9 (16), reflecting and further developing it."

9. Paragraph 1, as amended, was adopted.

Paragraphs 2 and 3

10. Mr. NDIAYE, supported by Miss CHANET, proposed that paragraphs 2 and 3 should be combined.

11. Mr. WENNERGREN, noting that article 10, paragraph 1, of the Covenant did not as a matter of law supplement article 7 but did so only in respect of persons deprived of liberty, suggested that the words "for them" should be added after the word "supplements" in paragraph 2, line three.

12. With regard to paragraph 3, he felt that detained persons were in constant danger of being subjected not merely to the "suffering or constraint" referred to in line 3 but also to contemptuous treatment that offended their dignity as human beings and he therefore proposed adding the word ", scorn" after the word "suffering".

13. Mr. PRADO VALLEJO concurred and suggested that the text should give fuller treatment to the obligation of States to prevent certain types of behaviour and treatment by guards that would violate the dignity of prisoners and that were more subtle than actual physical punishment.

14. Mr. MÜLLERSON supported Mr. Wennergren's suggestion regarding paragraph 3. As to the "constraint" referred to in paragraph 3, line 3, it was conceivably outside the scope of article 10, paragraph 1, which did not speak at all of constraint. He wondered what kinds of constraint were intended and whether they might not instead violate article 25 or other articles of the Covenant.

15. Miss CHANET noted that persons deprived of liberty were necessarily under constraint, hence the need for specific prohibition of suffering or constraint other than what was inherent in the deprivation of liberty. Since it was further stipulated that persons deprived of their liberty enjoyed all the rights set forth in the Covenant subject to the restrictions strictly necessary in a closed environment, there was no danger that States would misinterpret the Committee's general comment.

16. The general comment called for the dignity of persons deprived of their liberty to be respected. Scorn was a form of affront to dignity, and to specify it, as proposed by Mr. Wennergren, would tend to limit the generality of such affronts.

17. Mr. DIMITRIJEVIĆ was concerned that the Committee should not add to the Covenant too many elements from other instruments, including the Standard Minimum Rules. Moreover, the Committee's role was to question States on their implementation of the rules, and not to judge it.

18. Article 10 applied to all forms of deprivation of liberty; accordingly the word "prisoners" should be replaced by "persons deprived of their liberty".

(Mr. Dimitrijević)

19. The use of the word "suffering" in the third line of paragraph 3 was perhaps inadvisable, as it implied that suffering might be inflicted; a weaker word, such as "discomfort", might be preferable.

20. "Inherent" was perhaps not the best choice of word in the expression "inherent in the deprivation of liberty", as it implied that deprivation of liberty involved some natural or inevitable degree of constraint. However, it might be necessary to constrain a psychiatric patient, for example, more than a prisoner. Moreover, the constraints imposed should be measured against the purpose of the deprivation of liberty. Therefore, the phrase should be recast to speak of those restraints inevitable given the purpose of the deprivation of liberty or strictly related to that purpose.

21. Mr. NDIAYE agreed that "inherent in" was not quite the right expression and suggested that it might be more appropriate to say "resulting from".

22. Mr. MAVROMMATIS applauded that suggestion and said that he could also agree to changing the word "suffering", but that "discomfort" was too weak. Some alternative should be found to the phrase "organizing life" in the last sentence as it might invite restrictions, for instance, on family visits to prisoners.

23. With regard to paragraph 2, he questioned the use of the word "supplements" which seemed to suggest that something was lacking in article 7. Such was not the case, as article 10 and article 7 together amounted to a total code of conduct for the treatment of prisoners.

24. The CHAIRMAN noted that the general comment on article 7, in referring to article 10, said that the provisions of article 7 were complemented by those of article 10. The same wording could be adopted for the general comment under discussion.

25. If paragraph 2 spoke of not an express but a positive obligation it would be better linked to article 7.

26. Miss CHANET noted that paragraph 1 referred to "persons deprived of their liberty" but that in paragraph 3 the words used were "detained persons" and "prisoners"; the expression should be "persons deprived of their liberty" throughout the text except when specific reference was made to prisoners. She welcomed Mr. Ndiaye's suggestion that "inherent in" should be replaced by "resulting from". She agreed that the word "suffering" in paragraph 3 was too strong and "discomfort" too weak; some medium term should be found.

27. Mr. MAVROMMATIS suggested the word "hardship".

28. Mr. EL-SHAFEI suggested that the phrase "strictly necessary for organizing life in a closed environment" should be changed to "necessary for meeting the requirements of detention".

29. Mr. MÜLLERSON concurred with Mr. El-Shafei.

30. Miss CHANET noted that since the words "detained persons" and "prisoners" had been replaced by "persons deprived of their liberty", the meaning of the paragraph should not be confined to prisons. A psychiatric hospital or other closed environment could be said to be concerned with organizing life. If the passage was to be rewritten so as to apply to all persons deprived of their liberty, the entire paragraph should be recast.

31. Mr. DIMITRIJEVIC said that any wording chosen should be applicable to all persons deprived of their liberty. Such words as "detention" should be avoided.

32. The paragraph should state that persons deprived of their liberty enjoyed all the rights set forth in the Covenant except as mandated by other considerations.

33. He suggested that the phrase "that are strictly necessary for organizing life in a closed environment" should be replaced by "subject to the restrictions unavoidable in a closed environment".

34. Mr. EL-SHAFEI supported the proposal.

35. Mr. MAVROMMATIS noted that he had some purely subjective reservations, relating, for instance, to the classification of prisoners and to restrictions in respect of certain offences. In a general comment, however, it was not possible to go into such detail, and he would gladly accept Mr. Dimitrijevic's proposal.

36. The CHAIRMAN said he would take it that the Committee was prepared to adopt the changes suggested. In particular, paragraphs 2 and 3 would be combined into one and would begin with the words "Article 10, paragraph 1" rather than "This provision"; in the first line of that paragraph, "express" would be replaced by "positive"; in line 3, "supplements" would be replaced by "complements for them"; in paragraph 3, line 4 "inherent in" would be changed to "resulting from"; "prisoners" in line 6 and "detained persons" in line 1 would both be changed to "persons deprived of their liberty"; "suffering", in line 3, would provisionally be replaced by "hardship"; and the phrase "that are strictly necessary for organizing life" would be replaced, also provisionally, by "that are unavoidable".

37. It was so decided.

Paragraph 4

38. Mr. NDIAYE said that the last sentence of the paragraph appeared to contradict the second sentence, leaving the intent of the paragraph unclear. The discrimination which must be excluded related to persons deprived of liberty and not to conditions of detention, since the latter would obviously differ between developed and developing countries.

39. Mr. EL-SHAFEI said that the second sentence meant that all persons detained must be treated with respect and dignity, and that application of that rule could not be dependent on the material resources available. The third sentence of the paragraph meant that there must be no discrimination among those detained.

40. Mr. NDIAYE said that it was important not to provide pretexts for those who would cite paucity of resources as an excuse for not treating prisoners with respect and dignity.

41. Mr. EL-SHAFEI said that the difficulty might be resolved by deleting the first part of the last sentence, which would make it clear that the ideas contained in the second and third sentences of the paragraph were quite distinct.

42. Mr. DIMITRIJEVIĆ agreed that the wording of the paragraph might offer a pretext for mistreatment of detained persons. It should be made clear that the Committee was talking about a minimum standard. That could perhaps be done by incorporating that idea into the second sentence of the paragraph, which would read "... application of this rule, as a minimum, cannot be dependent ...". The first part of the last sentence should be deleted, as suggested, and the sentence should then be reworded to read: "This rule must be applied without discrimination ...".

43. The CHAIRMAN said that the reference to article 26 seemed inappropriate, since article 26 referred to an autonomous right. It would be preferable to refer simply to articles 2 (1) and 3.

44. Mr. DIMITRIJEVIĆ agreed to that suggestion, adding that, instead of referring to articles by number, it would be preferable to incorporate their actual wording. Those who might read the text, particularly non-lawyers, would find such an approach more transparent.

45. The CHAIRMAN said that the appropriate wording would be incorporated.

46. Paragraph 4, as amended, was adopted.

Paragraph 5

47. Mr. ANDO said that the paragraph was a somewhat general provision relating to the provisions of article 10, paragraph 1, of the Covenant, and should be placed immediately after paragraph 1.

48. The CHAIRMAN and Mr. EL-SHAFEI agreed with that suggestion.

49. Mr. ANDO also agreed, adding that doing so would help clarify the scope and application of the paragraphs that followed.

50. Mr. EL-SHAFEI pointed out that the paragraph covered anyone deprived of liberty, whether by the State or other parties.

51. The CHAIRMAN said that there were situations where a person was legally deprived of his or her liberty by a non-State entity, such as a private hospital. The question then arose of ensuring that such persons were treated with humanity.

52. Mr. EL-SHAFEI suggested that the problem could be resolved by deleting the words "i.e. to persons held against their will".

53. Mr. DIMITRIJEVIĆ said that the question of illegal deprivation of liberty fell under article 9. Paragraph 5 dealt with article 10, which was concerned with legal deprivation of liberty. The deletion proposed by Mr. El-Shafei would clarify the paragraph.

54. The CHAIRMAN suggested that the words "i.e. to persons held against their will" should be deleted and that the word "whether" would be replaced with the word "held". The paragraph, as amended, would be moved and become paragraph 2 and the following paragraphs renumbered accordingly. Under the new numbering, paragraph 1 would remain paragraph 1, paragraphs 2 and 3 would be combined as the new paragraph 3, paragraph 4 would remain paragraph 4 and paragraph 6 would become paragraph 5.

55. It was so decided.

Paragraph 6

56. Mr. HERNDL said that the words "against their will" should be deleted for the same reasons that they had been deleted from the previous paragraph.

57. Mr. NDIAYE said that the words "on their territory" should be replaced with "under their jurisdiction", in order to broaden the scope of application of the paragraph and to bring it more closely in line with the provisions of the Convention.

58. The CHAIRMAN wondered whether the word "legally" should be inserted in the paragraph, to bring it into line with the Spanish and French versions.

59. Mr. HERNDL, supported by Mr. MAVROMMATIS, said that rather than adding the word "legally" to the English text the corresponding word should be deleted from the French and Spanish versions. Including it would narrow the scope of the paragraph and risk excluding those cases where habeas corpus applied.

60. Mr. EL-SHAFEI said that the paragraph added nothing to the provisions already contained in the original paragraph 2 and could be deleted altogether.

61. Mr. DIMITRIJEVIĆ agreed that the paragraph served only to underline the assumption of the entire Convention that States were responsible for its observance. As a compromise, he suggested that the paragraph should be deleted, with the exception of the opening phrase which should be added to the original paragraph 5.

62. Mr. MAVROMMATIS agreed with the suggestion.

63. Miss CHANET, supported by Mr. NDIAYE, said that the paragraph had been retained in order to cover States which operated private penitentiary institutions and psychiatric clinics. Under article 10 of the Convention, the responsibility of States parties also extended to such establishments and it was important to prevent any dereliction by States.

64. The CHAIRMAN suggested that the text of the paragraph should read: "The ultimate responsibility for observance of the principle stipulated in article 10, paragraph 1, lies with the States parties as regards all institutions and establishments within their jurisdiction where persons are being held", and that it should be appended to the original paragraph 5 which, under the new numbering, had become paragraph 2.

65. It was so decided.

Paragraph 7

66. Mr. ANDO said that, as references to other United Nations documents should be kept to a minimum, he was in favour of deleting the entire paragraph.

67. Mr. DIMITRIJEVIC said that the paragraph should be retained, as it was legitimate for the Committee to know the extent to which such standards were being applied, but that the wording could be softened.

68. Mr. MÜLLERSON said that the words "in this connection" should be deleted as unnecessary.

69. Miss CHANET agreed that references to other applicable rules should be kept to a minimum but said that it was important to remind States parties exactly which rules were applicable. She therefore favoured retaining the passage while toning down its peremptory language.

70. Mr. AGUILAR agreed that the paragraph should be retained as the Committee constantly referred to the standards in question and sought further information on their application from States parties. States parties should be invited to provide the information and not placed under an obligation to do so and, consequently, he suggested the wording "to what extent they are applying United Nations standards".

71. Mr. ANDO said that he had no objection to the suggestion.

72. Mr. HERNDL said that he, too, agreed with the proposed wording and suggested that the word "applicable" should be replaced by "relevant". The text would therefore read as follows: States parties should indicate ... to what extent they apply the United Nations standards relevant to the treatment of prisoners".

73. The paragraph, as orally amended, was provisionally adopted.

The meeting rose at 6.05 p.m.